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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re C.C., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

CHANDRA P.,

Defendant and Appellant.

D074831

(Super. Ct. No. J519821)

APPEAL from findings and orders of the Superior Court of San Diego County,
Michael Popkins, Judge. Affirmed.

Suzanne Davidson, under appointment by the Court of Appeal, for Defendant and
Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County
Counsel, and Lisa Maldonado, Deputy County Counsel, for Plaintiff and Respondent.

Chandra P. appeals findings and orders removing her infant daughter from her custody under Welfare and Institutions Code section 361, subdivision (c)(1).¹ She contends the removal finding is not supported by substantial evidence and there were reasonable means to protect her daughter's physical health without removal from her custody. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

C.C. is the daughter of Chandra P.² In August 2018, the San Diego County Health and Human Services Agency (Agency) detained C.C. in protective custody after she and Chandra tested positive for methamphetamine and amphetamine at the time of C.C.'s birth. The test levels indicated recent use. C.C. was lethargic or irritable, most likely due to drug exposure in utero. She required a feeding tube and remained in the hospital for a week. Hospital staff expressed concern about Chandra's ability to care for C.C. because Chandra left the hospital against medical advice, did not return in time for C.C.'s feedings, and did not fully participate in required caregiver training.

Chandra gave conflicting reports about her drug use. In discussions with medical providers and social workers, she explained she only tried methamphetamine once; she previously used methamphetamine but "quit cold turkey" in 2017; "friends of friends" put

¹ All further statutory references are to the Welfare and Institutions Code.

² Chandra said either Christopher C. (Chris) or Justin C. could be C.C.'s father. The Agency was able to contact Chris but he did not come forward. A parent search was initiated for Justin.

drugs in her breakfast; and the positive test results were from an over-the-counter cold medication. Chandra also said she used methamphetamine before becoming pregnant but did not have an addictive personality and was not an addict. She said Chris, her boyfriend and C.C.'s alleged father, did not use drugs.

Chandra had been homeless before delivering C.C. She told the social worker she had a place for her and C.C. to live and said she had basic necessities for the baby at the residence, including a crib, playpen, car seat, diaper bag and diapers, clothes and other items. When the social worker visited the residence, the occupant said he was allowing Chandra and C.C. to live with him because Chandra and Chris had been planning to live with C.C. in a "broken van." The occupant said Chandra did not have any baby supplies at the residence.

Chandra's sister (Aunt) characterized Chandra as an "addict" who could be very manipulative. When Chandra discovered she was pregnant, Aunt allowed Chandra to live with her.³ She said Chandra was trying not to use drugs while she was living with her, but Aunt knew she was using due to her mood and energy swings. Aunt expressed concern about Chandra's mental health and said her symptoms were similar to those of another family member who was diagnosed with alcohol-induced schizophrenia. Chandra was paranoid and believed men in vans were following her. Aunt loved Chandra but her behavior and mental health issues made her very volatile and she had to protect her own children from Chandra's issues. Aunt said Chandra had a history of

³ Aunt lived in another state.

trauma from childhood sexual abuse. As an adult, Chandra made poor choices with men. Chandra had some sort of relationship with Steve, an older man who had been supporting her. Chandra believed Steve was harassing and stalking her. Chandra was also involved with Chris, who was a known methamphetamine dealer. Chris was abusive and controlling with Chandra. According to Aunt, Chandra did not have a significant history of drug use before she met Chris and started using methamphetamine.

After living with Aunt, Chandra moved to Colorado to live with her father. At a prenatal visit in February 2018, Chandra told medical personnel she had a history of methamphetamine use until 2017 but the baby's father was still a drug user in San Diego. Chandra stayed in Colorado for a short time before calling Chris and returning to California with him. She took a drug test at a prenatal visit at UCSD in May, which was negative.

In late August, Steve stopped at the social worker's office to discuss the case. He introduced himself as a father figure to Chandra. Steve said Chandra's boyfriend, Chris, was one of the biggest methamphetamine dealers in the Pacific Beach area of San Diego. Chandra began using methamphetamine when she met Chris. Chandra and Chris were evicted from their apartment because all they would do is smoke meth.

In reports prepared for the jurisdictional hearing, which was initially scheduled for August 30, 2018, the social worker said C.C. would not be safe in her mother's care. Despite testing positive for methamphetamine at the time of C.C.'s birth and reports from her family suggesting a history of drug use, Chandra continued to adamantly deny using drugs during her pregnancy. She did not believe she needed drug treatment but was

willing to cooperate with the Agency. C.C. was doing well, with no medical concerns. The social worker said Chandra was very attentive to the baby during visits and anticipated her needs. She fed C.C. every two hours and made sure she was comfortable and nurtured.

Chandra completed a substance abuse screening the day the Agency filed the section 300 petition on C.C.'s behalf. The following day, she completed intake for substance abuse treatment and started attending an intensive outpatient services program several days later. Chandra's drug tests were all negative. She participated in drug court and was in good compliance with the program.

The social worker said as the case progressed, the Agency became increasingly concerned about the stability of Chandra's mental health. Chandra appeared to be very paranoid and stressed. She said people were following her and tampering with her belongings and food. The Agency asked Chandra to undergo a psychological evaluation.

In an addendum report dated October 9, 2018, the social worker said Chandra was very cooperative in participating in services and visitation. She tested negative for drugs and was meeting her treatment goals. Chandra still denied using drugs during her pregnancy and said she had no idea how she and the baby tested positive for methamphetamine. Her psychological assessment was scheduled the day after the jurisdictional and dispositional hearing. Chandra had unsupervised, structured visitation with C.C. at Agency offices.

At the jurisdictional and dispositional hearing on October 9, 2018, the parties agreed to a document trial. The court admitted the Agency's reports in evidence. The

Agency acknowledged Chandra's progress in treatment but recommended that C.C. be removed from her custody.

Chandra asked the court to dismiss the section 300 petition, arguing the positive drug test at C.C.'s birth was an isolated incident and she had no other positive drug tests. She did not have mental health issues. She was being stalked and was taking steps to obtain a restraining order against that person. With respect to dispositional issues, Chandra said the Agency did not meet its burden of proof to show, by clear and convincing evidence, she could not safely care for C.C.

The juvenile court acknowledged Chandra's progress in the case and said there was a high likelihood of reunification based on her participation in services to date. However, Chandra's continued denial of drug use and the short time she had been sober indicated she was not sufficiently rehabilitated to the point where the court could find there was not a substantial risk to C.C. Based on all the evidence in the case, the juvenile court sustained the section 300 petition, found by clear and convincing evidence there was a substantial risk of harm to C.C. in Chandra's care, and removed C.C. from her physical custody. The court granted the Agency the discretion to allow Chandra to have overnight visits with C.C. and to begin a 60-day trial visit with the concurrence of minor's counsel.

DISCUSSION

Chandra contends there is not substantial evidence to support the order removing C.C. from her care. She argues there were reasonable protective measures to prevent removal, including random drug testing, compliance with drug court and outpatient

substance abuse treatment, and unannounced home visits by the social worker. Chandra argues the court did not adequately consider available protective measures to prevent removal.

A dependent child may not be taken from the physical custody of the parent unless the court finds there is clear and convincing evidence there is or would be a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being if returned home, and that there are no reasonable means to protect the child's physical health without removing the child. (§ 361, subd. (c)(1).) The court is required to state the facts on which the decision to remove the child is based. (*Id.*, subd. (e).)

In reviewing the court's findings and orders under section 361, subdivision (c), we employ the substantial evidence test, bearing in mind, however, the heightened burden of proof. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654; *T.J. v. Superior Court* (2018) 21 Cal.App.5th 1229, 1239 (*T.J.*).) We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. We draw all legitimate and reasonable inferences in support of the judgment. (*Candari v. Los Angeles Unified School Dist.* (2011) 193 Cal.App.4th 402, 408.)

Chandra sets forth the evidence in the light most favorable to her and does not meet her burden to demonstrate there is no evidence of a sufficiently substantial nature to support the findings or orders. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) The record shows the juvenile court was persuaded to remove C.C. from Chandra's custody by the totality of the evidence and the risk factors that were present at the time of the hearing. The juvenile court was primarily concerned by Chandra's inability to admit she

had used drugs during her pregnancy, thereby endangering her child. The risk of harm was magnified by C.C.'s infancy and complete dependence on a competent caregiver.

Chandra's reliance on *In re Hailey T.* (2012) 212 Cal.App.4th 139 (*Hailey T.*) and *In re Ashly F.* (2014) 225 Cal.App.4th 803 (*Ashly F.*) do not assist her. In *Hailey T.*, this court reversed an order removing Hailey from her parents. Hailey's younger sibling, Nathan, then-three months old, sustained a bruise on his cheek and eye at an unknown time. There were no explanations for his injury. Doctors believed Nathan had been struck and was the victim of child abuse. The children's grandmother, who had been caring for Hailey and Nathan earlier in the day, said Hailey had wanted to brush Nathan's hair. A doctor testified there was no way to determine whether the injury was accidental or nonaccidental. By the time of the disposition hearing, Hailey was an outgoing, social four year old with good language skills. Her parents had a healthy, long-term marriage and had started services at the earliest opportunity. (*Hailey T.*, at pp. 147-148.) The Agency characterized the parents as " 'good parents' " and did not identify any other risk factors in the parents' home. (*Id.* at pp. 142-143.)

Here, in contrast, Chandra's drug use during pregnancy, to which she did not admit, severely impacted C.C.'s health. Chandra gave conflicting accounts of her drug use to medical providers and social workers, which increased the risk to her child rather than mitigating it. Other risk factors included C.C.'s complete inability to protect herself against abuse or neglect, Chandra's unhealthy relationship with a drug dealer, her recent homelessness, which prompted her to move from state to state, and concerns about her mental health status. Unlike the parents in *Hailey T.*, Chandra did not have a support

network or stable circumstances. Although Chandra, like the parents in *Hailey T.*, began participating in services at the earliest opportunity, the juvenile court did not abuse its discretion in determining that Chandra, who was unable to maintain her sobriety while pregnant, needed to demonstrate a sustained period of sobriety before it would be safe for her to care for her child. Thus, in this case, there were far more risk factors to the child than in *Hailey T.* (*Hailey T.*, *supra*, 212 Cal.App.4th at pp. 142-143.)

This case is also significantly different from *Ashly F.* In that case, the mother physically injured her children by hitting them with extension cords, belts, and clothes hangers. The children's father told mother he would end their relationship if she ever used physical discipline again. (*Ashly F.*, *supra*, 225 Cal.App.4th at p. 806.) In its reports, the child welfare agency stated in perfunctory language " 'reasonable efforts were made to prevent or to eliminate . . . removal.' " (*Id.* at p. 809.) The court found the agency made reasonable efforts to prevent removal but did not state facts on the record to support its conclusion. The reviewing court reversed the removal order, stating the court should have considered the ample evidence showing there were reasonable means to protect the children, including the presence of a protective parent, the court's authority to order the offending parent to leave the home, and mother's remorse and amenability to services. (*Id.* at pp. 809-810.)

Here, the record shows that before filing the section 300 petition, the Agency held a meeting with Chandra to identify safety needs and protective strengths. Chandra did not, or could not, identify any support network. The Agency offered her a voluntary services plan requiring her to place C.C. in foster care, which she rejected. Instead of

protecting the child, like the father in *Ashly F.*, Chandra claimed her boyfriend did not use drugs, which posed a substantial risk to C.C. Social workers offered services to Chandra and detailed those services in the Agency's court reports. To her credit, Chandra immediately began participating in services. In its disposition report, the Agency reported that it had concluded C.C. could not safely remain in her mother's care because Chandra denied any drug use, exhibited paranoia, and had been sober only a short time. Here, unlike *Ashly F.*, the juvenile court adopted the Agency's recommendations for removal as the court's findings. The juvenile court further stated that in view of all the evidence, Chandra had not been sober for a sufficient length of time to mitigate the protective risk to C.C. Thus, the juvenile court made the required factual findings on the record. (§ 361, subd. (e).)

We conclude the record contains substantial evidence from which the juvenile court could make the necessary findings based on the clear and convincing evidence standard. (*T.J.*, *supra*, 21 Cal.App.5th at p. 1239.) The juvenile court did not err when it found there would be a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being if returned home, and there were no reasonable means to protect the child's physical health without removing the child from the parent's custody. (§ 361, subd. (c)(1).)

DISPOSITION

The findings and orders are affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

DATO, J.

GUERRERO, J.